

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2244

SPONSOR: Appropriations Subcommittee on Transportation and Economic Development,  
Governmental Oversight & Productivity Committee and Senators Fasano and Sebesta

SUBJECT: Florida Council on Deafness and the Florida Commission for the Blind

DATE: April 23, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Kelly</u>	<u>Kelly</u>	<u>ATD</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	<u>Withdrawn: Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute creates the Florida Council on Deafness and provides for the membership, role and purpose of the council. The council is required to review state agency compliance with access requirements, review federal and other state requirements, review the licensure and accreditation requirements of the ten most populous states, and make recommendations regarding licensure and accreditation of interpreters.

This bill creates an undesignated section of law.

## II. Present Situation:

### A. Organizational Structure of the Executive Branch of State Government

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government.<sup>1</sup>

Section 20.02, F.S., states:

... The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining

<sup>1</sup> Article II, s. 3 of the State Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute.<sup>2</sup> A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.<sup>3</sup>

Section 20.02, F.S., requires agencies that compose the executive branch to be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.<sup>4</sup>

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch.<sup>5</sup> The principal unit of the department is the division, which may be further subdivided into bureaus.<sup>6</sup> A bureau may be further divided into “sections” and “subsections.” Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the standard organizational structure for executive branch departments that is established in that subsection.

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<sup>2</sup> *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3<sup>rd</sup> DCA 1966).

<sup>3</sup> *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5<sup>th</sup> DCA 1985).

<sup>4</sup> Article IV, s. 6 of the State Constitution states: All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by serving at the pleasure of the governor, except: (a) when provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office; (b) boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

<sup>5</sup> Section 20.04(1), F.S.

<sup>6</sup> Section 20.04(3), F.S.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

Chapter 20, F.S., also contains definitions for executive branch entities that are not departments. For example, definitions are provided for “council,” “committee,” “commission” and “board of trustees.” A “commission” is defined as

“ . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and *exercising limited quasi-legislative or quasi-judicial powers, or both, independently* of the head of the department or the Governor [*emphasis added*].”

A “board of trustees” is defined as

“ . . . a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”

#### B. Advisory Bodies, Commissions, and Boards.

Section 20.052, F.S., establishes some parameters for the creation of advisory bodies, commissions and boards.<sup>7</sup> That section requires that such an entity:

- < May be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.

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<sup>7</sup> This provision is not, however, binding on the Legislature. As the Florida Supreme Court has ruled in a series of cases, the most recent of which is *Neu v. Miami Herald Publishing Company*, 462 So.2d 821 (Fla. 1985), one legislative body cannot bind a future Legislature to an obligation. In *Neu*, a case addressing the Public Meetings Law, the court stated “A legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law.” *See, Neu v. Miami Herald Publishing Company*, 462 So.2d 821, 824 (Fla. 1985). In an earlier case reviewing a challenge to establishment of geographic municipal boundaries, the court stated that, “[t]he Legislature cannot prohibit a future Legislature by proper enactment changing boundaries which it [the earlier Legislature] established” *Kirklands v. Town of Bradley*, 139 So. 144, 145 (Fla. 1932).

- < It must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose.
- < The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions, boards of trustees, and other collegial bodies established as adjuncts to executive agencies.

Section 20.052(4), F.S., states that an advisory body, commission, board of trustees, and other collegial body may not be created or reestablished unless:

- < It meets a statutorily defined purpose.
- < Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.
- < Its members, unless expressly provided in the State Constitution, are appointed for 4-year staggered terms; and
- < Its members, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

Section 20.052(5), F.S., also requires that private citizen members of a commission or board of trustees that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office holding prohibition provision of Art. II, of the State Constitution.

Section 20.052(5)(c), F.S., provides that unless an exemption is otherwise specifically provided by law, all meetings of these types of bodies are public meetings under s. 286.011, F.S., and that minutes, including a record of all votes cast, must be maintained for all meetings.

If such an entity is abolished, its records must be appropriately stored within 30 days after the effective date of its abolition, by the executive agency to which it was adjunct, and any property assigned to it must be reclaimed by the executive agency. The entity is expressly prohibited from performing any activities after the effective date of its abolition. The section does not, however, affect the right to institute or prosecute any cause of action by or against an abolished entity if the cause of action accrued before the date it was abolished. Any cause of action pending on the date the entity is abolished or instituted thereafter must be prosecuted or defended in the name of the state by the Department of Legal Affairs.

### **III. Effect of Proposed Changes:**

#### **A. The Florida Council on Deafness**

The bill creates the Florida Council on Deafness (council). The council is assigned to the Department of Education (DOE) for administrative purposes. The council, however, is independent of the DOE.

The council consists of 9 members appointed by the Governor and confirmed by the Senate. The Governor is to make his appointments after consulting with statewide not-for-profit professional

organizations that represent deaf, hard-of-hearing, and late-deafened individuals. Appointments are to be made by July 1, 2003.

Terms will be 4 years long, though not all initial appointments will be for a full 4-year term in order to provide for staggered membership. Five of the initial appointees must be appointed to a 2-year term and 4 members will be appointed to a 4-year term. Vacancies are to be filled in the same manner as the original appointment. Council members may be reimbursed for per diem and travel expenses pursuant to s. 112.061, F.S.

The first council meeting is to be held by August 1, 2003. The council is required to meet at least once a quarter. All meetings are subject to the call of the chair. The chair is elected by a majority vote of the members for a 1-year term. The DOE is to assign staff to assist the council in the performance of its duties.

The council is an advisory and coordinating body that is to recommend policies that address the needs of deaf, hard-of-hearing, and late-deafened individuals and to recommend methods to improve coordination of services. The council is authorized to provide technical assistance, advocacy, and education. The council is to:

- < Provide information and assistance to the Legislature.
- < Provide technical assistance to other state agencies.
- < Provide information and referral services.
- < Promote public and individual advocacy for deaf, hard-of-hearing, and late-deafened citizens.
- < Conduct public hearings as needed.

The council is required to prepare a report that is to be filed with the Governor, the Legislature and the court system by January 1, 2004. The report is to include:

- < A review of state agencies to determine if they are in compliance with accessibility standards as they relate to services for deaf, hard-of-hearing, and late-deafened individuals.
- < A review of federal and state statutes, rules and regulations that establish requirements that agencies must comply with, including, but not limited to, equipment and communication accessibility standards in the provision of services to deaf, hard-of-hearing, and late-deafened individuals.
- < A comparison of licensure and accreditation requirements for sign-language interpreters, oral interpreters, and entities providing services, both directly and indirectly to individuals with hearing loss among the ten most populous states.
- < Recommendations for standards for and licensure of sign-language interpreters and providers of Computer-Aided Real-time Translation services (CART) and other service provider accreditation standards.

The council is authorized to:

- < Secure assistance from all state departments and agencies in order to avail itself of expertise at minimal cost.

- < Obtain information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department or agency thereof.
- < Apply for and accept funds, grants, gifts, and services from local or state government or the Federal Government, or from any of their agencies, or any other public or private source and may use funds derived from those sources for the purposes authorized by the section.

All executive branch state agencies are instructed, and all other state agencies are requested to assist the council in the accomplishment of its purposes.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

The cost to the government sector is unknown. However, there will be costs associated with council meetings, travel and per diem costs for the council members. Staff for council meetings is to be provided by the DOE; these costs are unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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